

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re BRIAN N., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN N.,

Defendant and Appellant.

F044322

(Super. Ct. No. JW101383-00)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Charles B. Pfister, Judge.

Jackie Menaster, under appointment by the Court of Appeal, and Gary Riebesell, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Charles A. French and John A. Thawley, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Vartabedian, Acting P.J., Wiseman, J., and Cornell, J.

Minor appellant Brian N. admitted committing a misdemeanor violation of causing a fire to a structure or forest land. (Pen. Code, § 452, subd. (c).) According to his probation report, 14-year-old Brian and a companion started a grass fire on a vacant field by playing with fireworks. The juvenile court adjudged Brian a ward of the court, placed him on formal probation with various terms and conditions, and ordered him to pay \$1,195.41 in restitution to the California City Fire Department (Fire Department).

On appeal, Brian contends the juvenile court improperly failed to consider him for informal probation under Welfare and Institutions Code section 725, subdivision (a)<sup>1</sup> because the amount of restitution exceeded \$1,000. Brian also believes the juvenile court's restitution order was unauthorized by law. We disagree with both arguments and affirm the disposition.

## **DISCUSSION**

The Attorney General proclaims Brian's contentions are precluded from appellate review for failing to raise them below. Brian, however, affirmatively requested the juvenile court to order informal probation under section 725, subdivision (a). Moreover, he argues the juvenile court imposed an unauthorized restitution order. "[O]bvious legal errors at sentencing that are correctable without referring to factual findings in the record or remanding for further findings are not waivable." (*People v. Smith* (2001) 24 Cal.4th 849, 852.) We therefore address the merits of Brian's claims.

### **I. *Informal Probation***

Section 725, subdivision (a) provides that after a juvenile court finds a minor committed an "offense other than any of the offenses set forth in Section 654.3, it may, without adjudging the minor a ward of the court, place the minor on probation, under the supervision of the probation officer, for a period not to exceed six months." If the minor

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

successfully completes the informal probation period, the minor avoids wardship and the juvenile court dismisses the case from the minor's record. If the minor is unsuccessful, the juvenile court may revoke the informal probation and set the matter for a contested disposition hearing. (*In re Deon W.* (1998) 64 Cal.App.4th 143, 147.)

Section 654.3 is part of the statutory scheme authorizing the probation officer or juvenile court to impose informal probation *before* adjudication and excludes certain enumerated "cases" in which a juvenile is ineligible for informal probation.<sup>2</sup> (See §§ 654

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<sup>2</sup> Section 654.3 provides:

"No minor shall be eligible for the program of supervision set forth in Section 654 or 654.2 in the following cases, except in an unusual case where the interests of justice would best be served and the court specifies on the record the reasons for its decision:

"(a) A petition alleges that the minor has violated an offense listed in subdivision (b) of Section 707.

"(b) A petition alleges that the minor has sold or possessed for sale a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

"(c) A petition alleges that the minor has violated Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

"(d) A petition alleges that the minor has violated Section 186.22 of the Penal Code.

"(e) The minor has previously participated in a program of supervision pursuant to Section 654.

"(f) The minor has previously been adjudged a ward of the court pursuant to Section 602.

"(g) A petition alleges that the minor has violated an offense in which the restitution owed to the victim exceeds one thousand dollars (\$1,000). For purposes of this subdivision, the definition of 'victim' in

& 654.2.) Those cases include section 654.3, subdivision (g), which makes a minor ineligible for informal probation where the “petition alleges that the minor has violated an offense in which the restitution owed to the victim exceeds one thousand dollars (\$1,000).” Brian contends that because subdivision (g) is not an “offense,” and section 725, subdivision (a) only excludes “offenses” listed under section 654.3, the probation officer improperly misled the juvenile court from considering him for informal probation.

We disagree with Brian’s narrow and strained reading of section 725, subdivision (a). When a statutory provision is susceptible to more than one reasonable interpretation, “ ‘ “we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy ... and the statutory scheme which the statute is a part.” ’ ” (*People v. Jefferson* (1999) 21 Cal.4th 86, 94.) Despite the disparity in language between “cases” and “offenses” in sections 654.3 and 725, subdivision (a), it is apparent the Legislature intended to invoke the same exclusions from eligibility for informal probation determinations made both before and after adjudication. Section 654.3 provides a list of “cases” and does not mention the term “offenses.” By cross-referencing section 654.3, section 725, subdivision (a) excludes from informal probation eligibility a minor whose “petition alleges that the minor has violated an offense in which the restitution owed to the victim exceeds one thousand dollars (\$1,000).” (§ 654.3, subd. (g).) Here, Brian committed an offense in which the petition

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paragraph (1) of subdivision (a) of Section 730.6 and ‘restitution’ in subdivision (h) of Section 730.6 shall apply.

“(h) The minor is alleged to have committed a felony offense when the minor was at least 14 years of age. Except in unusual cases where the court determines the interest of justice would best be served by a proceeding pursuant to Section 654 or 654.2, a petition alleging that a minor who is 14 years of age or over has committed a felony offense shall proceed under Article 20.5 (commencing with Section 790) or Article 17 (commencing with Section 675).”

alleged restitution in the amount of \$1,195.41. Accordingly, the juvenile court properly refused to consider placing Brian on informal probation under section 725, subdivision (a).

## **II. *Restitution to the Fire Department***

When a minor is adjudged a ward of the court, the juvenile court must order restitution to reimburse a victim for “any economic loss” resulting from the minor’s conduct bringing him within the court’s jurisdiction. (§ 730.6, subs. (a)(1) & (h).) The juvenile court may order restitution to any legal entity that is a “direct victim” of an offense. (§ 730.6, subd. (k).) Brian claims the juvenile court imposed an unauthorized restitution order to the Fire Department because the firefighters were not the direct victims of the property damage and did not suffer any economic loss in putting out the fire.

“The standard of review of a restitution order is abuse of discretion. ‘A victim’s restitution right is to be broadly and liberally construed.’ [Citation.] ‘ “When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.” ’ ” (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132 (*Johnny M.*)).

The juvenile court is vested with discretion to order restitution in a manner that will further the legislative objectives of making the victim whole, rehabilitating the minor, and deterring future delinquent behavior. (*In re S.S.* (1995) 37 Cal.App.4th 543, 549; *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1387.)

Brian compares reimbursing a fire department to reimbursing an insurance carrier, which the Supreme Court has found not a direct victim. (*People v. Birkett* (1998) 21 Cal.4th 226, 233.) He insists that only the owner of the vacant lot in which he caused the fire is the direct victim worthy of restitution under section 730.6. Brian believes a fire department may be the direct victim of the crime of arson only where the damage is to its own firehouse.

The Supreme Court, however, has found that a direct victim of welfare fraud may be a government agency that administers the program. (*People v. Crow* (1993) 6 Cal.4th 952, 957.) “A ‘victim’ is a ‘person who is the object of a crime....’ ” (*Ibid.*, citing Black’s Law Dict. (5th ed. 1979) p. 1405, col. 2.) “When someone steals from a government agency, that agency, and the taxpayers who fund it, suffer a loss that is no less than the loss suffered by an individual whose property has been stolen.” (*People v. Crow, supra*, at p. 957.)

A local fire department maintains the duty and responsibility to fight fires and minimize the danger of fire. (See generally Health & Saf. Code, § 13000, et seq.; Gov. Code, §§ 25210.50, 38611; *City of Oakland v. Public Employees’ Retirement System* (2002) 95 Cal.App.4th 29, 56-61.) Given a fire department’s duties and responsibilities, the juvenile court could reasonably find the Fire Department was a “direct victim” of Brian’s unlawful burning of a vacant lot requiring firefighting protection.

Brian further contends the Fire Department did not suffer any “economic losses” because the cost of fighting a fire was collateral to his conduct of causing the fire. Brian suggests “economic losses to the land might include damage to structures on the land or even valuable timber on the land itself[,]” but that the cost of firefighting is not an actual economic loss. According to the Fire Department’s expense worksheet, the department attributed its requested \$1,195.41 restitution almost entirely to labor costs.

Although Brian disagrees with the decision, an appellate court has already held that in addition to actual property damage, “a restitution award may also properly include the reasonable value of employee work product lost as a result of the criminal conduct of another, be that person a minor or an adult.” (*Johnny M., supra*, 100 Cal.App.4th at p. 1134.) The court in *Johnny M.* specifically found a school district’s labor expense of cleaning up and repairing classroom damage caused by a minor an “economic loss” for which the juvenile court could order restitution. Moreover, Health and Safety Code, section 13009, subdivision (a) makes any person “who negligently, or in violation of the

law, sets a fire, allows a fire to be set, or allows a fire kindled or attended by him or her to escape onto any public or private property ... liable for the fire suppression costs incurred in fighting the fire ... and those costs shall be a charge against that person.” Under *Johnny M.* and the Health and Safety Code, the juvenile court issued Brian an authorized restitution order to reimburse the Fire Department’s expense in fighting the fire.

#### **DISPOSITION**

The judgment is affirmed.

**CERTIFIED FOR PARTIAL PUBLICATION**  
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**ORDER GRANTING REQUEST  
FOR PARTIAL PUBLICATION  
OF OPINION**

THE COURT:

It appearing that the nonpublished opinion filed in the above entitled matter on June 23, 2004, meets the standards for publication specified in California Rules of Court, rule 976(b), it is ordered that the opinion be certified for publication in the official reports, with the exception of the introductory portion of the Discussion and Part I.

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Vartabedian, Acting P. J.

WE CONCUR:

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Wiseman, J.

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Cornell, J.